LEGAL.

SUPREME COURT SYLLABI.

[Published in The Topeka State Journal, May 13, 1916.]

No. 20,196.
Antonia Snyder, Appellee,
vs.
The Leavenworth Light, Heat & Power Company, Appellant.
Appeal from Leavenworth County.
AFFIRMED.

Syllabus. By the Court. Johnston, C. J.
An electric company built and maintained a system of high voltage wires about thirty feet above the ground along the street in a thickly populated portion of a city. When built the wires were properly insulated as the law requires, but the insulation had rotted so that the wires had been nearly bare for a number of years. A small wire with a stone attached had been thrown over the uninsulated wires of the company and supposed to have been done by boys at play, but the evidence did not show by whom, how or when the wire was thrown over those of the company. A boy sitting upon a coping upon the side of the street who had the small wire in his hand fell over, and a neighbor noticing that he did not move and that his clothes were on fire called for help. The plaintiff hearing the call hurried to the aid of the boy who was already dead and upon touching him she received an electric shock causing severe burns and other injuries. In an action brought by her, it was found that the destructive current escaped from the wires of the electric company through its negligence, that the plaintiff was injured when she went to the aid of the boy as she had a right to do, and it is **held** that the jury was warranted in finding that the throwing of the wire over the uninsulated wire was an act to be anticipated by the company and against which it should have provided, that the negligence of the company was the approximate cause of the injury and that under the evidence the plaintiff was entitled to recover for the injuries sustained by her.
Burch, J., Mason, J., Porter, J., West, J. and Marshall, J., concurring.
Dawson, J., dissenting.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,152.
Geo. A. Morris, Appellant,
vs.
James Hettinger, Appellee.
Appeal from Reno County.
AFFIRMED.

Syllabus. By the Court. West, J.
The rule declared in Clark v. Nichols, 79 Kan. 612, 100 Pac. 626, that in redeeming from a foreclosure judgment the contract rate of interest governs followed.
Johnston, C. J., Burch, J., Porter, J., Marshall, J. and Dawson, J., concurring.
Mason, J., dissenting.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,153.
H. E. Hayes, Appellee,
vs.
Joe Nutter, Appellant.
Appeal from Washington County.
AFFIRMED.

Syllabus. By the Court. Marshall, J.
1. In an action for slander, the proof of the words spoken need not correspond in every particular with the words as charged. It is sufficient that the words charged as substantially proved by the evidence.
2. It is not error to refuse instructions which are fairly covered by those given. (Baugh v. Fist, 84 Kan. 740, syl. p 3, 115 Pac. 551.)
3. In a slander case it is not error for the court to instruct the jury that they find for the plaintiff if they find from the evidence that the defendant spoke the slanderous word or words of substantially the same meaning.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,401.
The State of Kansas, Appellee,
vs.
Myron O. Holmes, Appellant.
Appeal from Ford County.
AFFIRMED.

Syllabus. By the Court. Johnston, C. J.
1. An information which charged in effect that the defendant through another fraudulently effected a sale of his team of horses; that he afterwards approached the purchaser and falsely represented that the horses so sold had been stolen from him; that he then demanded a return of the team or the payment of their value; that the purchaser gave him a check for their value which was the equivalent of money; and that he and his accomplices thus conspired together to cheat and defraud the purchaser and had obtained a check, a thing of value, by false pretenses, stated an offence under section 94 of the Crimes Act.
2. The averment that another conspired and co-operated with the defendant in obtaining the check by false pretenses did not vitiate the charge against the defendant nor leave room for doubt as to the offence alleged.
3. In such a prosecution an essential element to be proven is that the fraud was accomplished by the false pretenses alleged and although the money had not been paid on the check when the defendant was arrested and was subsequently restored to the drawer, it was a thing of value when given as there was money in the bank for its payment and therefore the fraud was accomplished and the offence charged was complete when the check was obtained by the defendant.
4. A restoration of check, money or property fraudulently obtained by an accused does not wash away the criminality of his acts.
5. The State v. Lewis, 26 Kan. 123, overruled.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,156.
John Gillies, Appellee,
vs.
George S. Linscott, Appellant.
Appeal from Leavenworth County.
AFFIRMED.

Syllabus. By the Court. Dawson, J.
1. The evidence to support allegations of fraud in the purchase of corporate stock by plaintiff's agent examined and found sufficient to justify the court's refusal to order an instructed verdict.
2. It is not necessary to state all the law of a case in one instruction to the jury, and a single instruction which is correct so far as it goes cannot be excised from its context and interpreted to govern the entire controversy without regard to other appropriate instructions which were also given.
3. Where the main issue in an action to recover the purchase price of corporate stock from the plaintiff's agent was on the question of the agent's fraudulent conduct in procuring outstanding stock instead of treasury stock, the jury were asked this question:
"Q. 9. Did the defendant tell the plaintiff at the time of each of said purchases that he could purchase preferred stock in the Mahogany Lumber and Transportation Company at a hundred dollars per share?"
The jury's first answer was:
"A. The evidence shows (see checks to M. L. & T. Co.) that defendant led plaintiff to believe stock was from said company, and worth $100.00 per share."
On motion of defendant the jury were required to retire and make a more definite and specific answer to this question, and their corrected answer was "Yes."
HELD that by the aid of the first answer and the other special findings, it is clear that the jury did not intend to adopt defendant's contention that he was authorized to purchase outstanding stock; and HELD also that the defendant was not entitled to judgment on this finding.
3. The plaintiff requested the defendant, his banker in whom he had implicit confidence, to find a safe investment for some money. The defendant recommended the preferred stock of a navigation company, saying that he and his father and brothers were interested in the company to the extent of $30,000, and undertook to procure treasury stock from the company for plaintiff. Plaintiff gave a check for $800 payable to the company for eight shares of stock procured for him by defendant. Later, the defendant procured twenty additional shares for plaintiff under the same circumstances and which were also paid for by plaintiff's check for $2,000 in favor of the company. The company never received the checks or their proceeds nor did plaintiff's money go to enhance the corporate capital or assets. The checks were cashed by defendant without endorsement and the proceeds disposed of by defendant, and the corporate stock which defendant procured and delivered to plaintiff was outstanding stock acquired from defendant's brother and mother and not treasury stock. The true extent of the interest of defendant and his father and brothers in the navigation company was only $11,000 invested in preferred stock, and holding of $17,500 of common stock of no value. The foregoing and incidental facts held sufficient to support a judgment for plaintiff for the return of the purchase price and interest, less dividends received.
4. Rule followed that in actions for relief on the ground of fraud, whether that relief be for recission or damages, the statute of limitations does not commence to operate until the discovery of the fund.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,163.
J. H. Canfield, Appellee,
vs.
The Connecticut Fire Insurance Company, of Hartford, Conn., a corporation, Appellant.
Appeal from Cowley County.
REVERSED.

Syllabus. By the Court. Dawson, J.
Where a lawsuit arises over an insurance policy and the plaintiff claims a total loss and demands the full amount of the policy, $1,000, and the insurance company tenders $650 in settlement, and the jury finds the loss under the policy to be $600, the plaintiff is not entitled to have an attorney's fee taxed against the defendants as part of the costs.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,159.
L. L. Gilmore, Appellee,
vs.
Annetta H. Hoskinson, et al., Appellants.
Appeal from Reno County.
Reversed and Remanded.

Syllabus. By the Court. Marshall, J.
1. In an action by one who succeeds to the rights of another under a contract for the purchase of real property by assignment of the contract and by quitclaim deed from the contract purchaser, against the administratrix and heirs of the person making the contract for the sale of the real property, the assignor of the contract and grantor in the quitclaim deed is incompetent to testify concerning any transaction or communication had personally by him with the deceased party to the contract.
2. Where a contract purchaser of land, unable to make payments as stipulated, executes a warranty deed to a third party, and at the same time takes from that party a contract for the sale and conveyance of land, and in that contract promises to pay for the land an amount substantially equal to the consideration named in the deed and to pay the taxes on the land and retains possession thereof, the deed and contract constitute a mortgage to secure the payment of the amount to be paid under the contract.
3. The estate of one who by contract agreed to convey real property by warranty deed is not liable to the contract purchaser or his assignee or quitclaim grantee for failure to make a warranty deed, where that failure is caused by the failure of the warranty of the contract purchaser who conveyed the real property by warranty deed to the one who contracted to convey the land at the time the warranty deed was delivered to him.
4. A deed to real property and another writing showing that the deed is a mortgage, must be recorded together at the same time and place, under section 4020 of the Revised Laws of Oklahoma, 1910, in order to have effect as a recorded mortgage; and if not so recorded, the effect is the same as if the mortgage were not recorded.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,167.
Samuel C. Kanzius, et al.,
vs.
E. N. Jenkins et al., (The Western Casualty & Guarranty Insurance Company, Appellant; The Board of County Commissioners of the County of Barton, Appellee.)
Appeal from Barton County.
MODIFIED AND AFFIRMED.

Syllabus. By the Court. Johnston, C. J.
1. A construction company contracted with county commissioners to build and repair a number of bridges and the faithful performance of the contract was guaranteed by a bonding company. The construction company failed to carry out the contract, and the bonding company having declined to assume the burden, the commissioners employed others to furnish the work, and when it was done allowed and paid the bills deemed to be necessary and reasonable for the completions of the contract, but the construction company and the bonding company refused to reimburse the commissioners for the outlay. In this action against the contruction and bonding companies the contract is interpreted, and although found to be somewhat ambiguous is held to be valid: that upon the default of the constuction company and the refusal of the bonding company to complete the work the commissioners were authorized to employ a builder to finish the work and to be entitled to recover for labor and other expenses reasonably necessary to complete the work in accordance with the contract, and that the plan adopted of paying such builder the cost of labor and material and a per cent for general expenses for things not easily numerated and which appear to be reasonably necessary, is permissible.
2. The construction company which agreed to construct a bridge with a concrete floor laid the concrete in the latter part of March in the presence and with the consent of an inspector employed by the county commissioners. The night following there was a sudden change of temperature which resulted in freezing and disintegrating the concrete so that the floor had to be relaid. No provision was made in the contract to relieve the contractor from the effects of frosts, storms or like casualty. **Held,** that the loss caused by the freezing of the concrete falls upon the contractor.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,176.
Mrs. Wm. B. Orr, Appellee,
vs.
The Missouri Pacific Railway Company, Appellant.
Appeal from Wyandotte County.
Third Division.
AFFIRMED.

Syllabus. By the Court. West, J.
1. The evidence examined and found to support the general verdict. The special findings examined and held not essentially inconsistent with one another or with the general verdict.
2. The rule that the general findings must, if possible, be harmonized with the general verdict, followed.
3. The practice of procuring or attempting to procure for a nominal sum a release from one still suffering from the excitement and pain of a recent injury is not to be encouraged or judicially approved.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 19,908.
Artemas Ward, doing business under the firm name of Ward & Gow, Appellee,
vs.
The Abilena Sales Company, Appellant.
Appeal from Dickinson County.
DISMISSED.

Syllabus. By the Court. Marshall, J.
1. Under section 565 of the code of civil procedure, an appeal can not be taken from an order granting a continuance.
2. Where a demurrer to evidence has been filed, it is not error from which an appeal can be taken to grant a continuance, on a verbal request therefor, to procure additional evidence, although the demurrer is not disposed of and is good as against the evidence introduced.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,526.
The City of Goodland, Appellee,
vs.
L. W. Popejoy, Appellant.
Appeal from Sherman County.
REVERSED.

Syllabus. By the Court. Burch, J.
A section of an ordinance of a city of the second class made it unlawful for an owner or occupant to deposit tin cans, manure, ashes, garbage, and other refuse matter on his lots or to allow such matter to remain on his lots. The condition that the refuse matter should be offensive to others or detrimental to the public health or welfare was not recognized, no distinction was made between nocuous and innocuous deposits or accumulations, and the offense was complete if any of the things mentioned were deposited or allowed to remain, whatever the quantity, circumstances, or length of time. **Held,** the sections of the ordinance was beyond the authority conferred on cities of the second class to secure the general health and to prevent and remove nuisances.
Mason, J., Porter, J., West, J., and Dawson, J., concurring.
Johnston, C. J., and Marshall, J., dissenting.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 19,863.
Rosa A. Null, Appellant,
vs.
D. O. Potts, Appellee.
Appeal from Sedgwick County.
Second Division.
AFFIRMED.

Syllabus. By the Court. Burch, J.
The action was one against a so-called agent and trustee for money coming into his hands for which he had not accounted after demand therefor. The petition disclosed that the money came into the defendant's hands more than three years before the action was commenced. In response to a motion the court ordered the plaintiff to make the petition definite and certain by stating approximately the date of the demand, non-compliance with which gave rise to the cause of action. The plaintiff was unable to comply with the order. **Held,** the action was properly dismissed.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,298.
Albert W. Taylor, Appellee,
vs.
Sulzberger & Sons Company, Appellant.
Appeal from Wyandotte District Court First Division.
REVERSED.

Syllabus. By the Court. West, J.
1. An adult son married and living with his wife and children, separate from his mother, is not a member of such mother's family within the meaning of the Workmen's Compensation Act. Laws of 1913, chapter 216, section 4.
2. It is not the purpose or policy of the statute to continue compensation to a dependent minor after reaching the age of eighteen years unless physically and mentally incapable of earning wages, or to award compensation to an adult married son the head of a family living separate from that of his mother who from her wages as an employee made small contributions towards his support, he being physically and mentally capable to earn and actually earning fair wages.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 19,881.
John W. Matthews, Appellant,
vs.
C. A. McNeill, et al., Partners, etc., Appellees.
Appeal from Labette County.
AFFIRMED.

Syllabus. By the Court. Mason, J.
1. The invalidity of a note and mortgage, attacked as fraudulent and void because given in pursuance of a contract contravening public policy, held not to be established as a matter of law by the undisputed facts or the findings of the jury.
2. No one but the client can found an appeal upon the admission of evidence in violation of the privilege with respect to confidential communications to an attorney.
3. An instruction limiting the effect of evidence held not to have been prejudicial to a party who objected to its admission for any purpose.
4. In an action to set aside a compromise of a disputed claim as fraudulent and unconscionable, the defendant may show statements made to him by other persons, if they tend to show his own good faith.
5. Various items of evidence held to have been properly admitted.
6. In an action for relief on the ground of fraud an instruction that the plaintiff must satisfy the minds of the jury by the fair weight or preponderance of the evidence does not impose too severe a requirement upon him.
7. Various instructions held not to be erroneous as introducing extraneous issues.
8. Various special questions submitted by the court to the jury held not to show a trial on a wrong theory.
9. A judgment on a note and mortgage may be rendered on a verdict in favor of the holder which does not state the amount due, where the only question in dispute was their validity.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 19,888.
J. W. Stark, Appellee,
vs.
Hunter M. Meriwether, et al., Defendants,
Hunter M. Meriwether, Appellant.
Appeal from Wyandotte County.
Division 3.
AFFIRMED.

Syllabus. By the Court. Porter, J.
1. Whether accertions have been formed from the main bank of a stream to an island in the channel or from the island to the bank is a question of material fact to be determined from the evidence, construed, of course, by reference to well established principles governing the law of accretions. It is none the less a question of fact
2. The proper method or rule for apportioning accretions on rivers or other bodies of water between adjoining proprietors depends upon varying circumstances and conditions so that it is impracticable to state a general rule that will apply in all cases.
3. On the facts stated in the opinion, **held,** that the adoption of a rule of apportionment between two adjoining proprietors by which each acquires a frontage on the new shore proportional to his frontage on the old one, by an extension of the original side lines, will not be disturbed.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 19,894.
Vida Malet, Appellee,
vs.
James Haney, et al., Appellant.
Appeal from Sherman County.
AFFIRMED.

Syllabus. By the Court. West, J.
1. A tax deed however perfect in form and valid in law does not give the holder a right to take possession by force or violence of the land described in such deed.
2. Error in charging that an attorney's fee may be allowed was rendered harmless in this case by the subsequent remittitur of such fee.
3. The statute prescribing no qualifications for commissioners in partition, the appointment of witnesses in the case who had testified as to the value of the property involved did not of itself work material prejudice.
4. A mistake in the charge as to the date when the defendant obtained a certain quit claim deed was not substantially prejudicial, full opportunity being had to correct such date in the argument by reference to the evidence on that point.
5. The remittitur of a substantial portion of the sum awarded by the jury was not a confession of passion or prejudice, a remittitur being proper only in the absence of passion and prejudice.
All the justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 19,914.
The Farmers & Merchants Bank of Courtland, Appellee,
vs.
E. B. Tipton and S. L. Tipton, Appellants.
The Swedish-American State Bank of Courtland, Appellee.
Appeal from Republic County.
AFFIRMED.

Syllabus. By the Court. Johnston, C. J.
A vendor sold land under an agreement with the vendee to give a merchantable title and place him in possession of the same, the agreed consideration being paid to the vendor. The persons from whom the vendor acquired the land and who were in possession of the same set up a claim that the deed they had executed to the vendor was in fact a mortgage and they refused to yield possession of the land, so that the vendor was unable to carry out his agreement with the vendee. The vendee demanded the return of the money which he had paid for the land and refused to bring an action to quiet his title against adverse claimants. The vendor then brought an equitable action to quiet the title of the land, making the vendee a party defendant. **Held,** that the vendor had an interest in the land sufficient to maintain an action to quiet the title thereto and to determine adverse claims.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 19,913.
T. B. Shannon, Appellee,
vs.
Albert Abrams, et al., Appellants.
Appeal from Allen County.
AFFIRMED.

Syllabus. By the Court. Dawson, J.
1. Where an action is for the recovery of money only the question whether the supreme court has jurisdiction to review the judgment at the instigation of the party ordered to pay it, depends upon the amount, exclusive of costs, which the appellant is required to pay.
2. Under section 566 of the civil code where the action is for the recovery of money only, the right of appellant to have his cause reviewed by the supreme court depends on the aggregate sum of money which he is required by the judgment to pay, and is not affected by the fact that the judgment is only the total of a series of judgments on separate counts no one which if considered independently would be for a sum large enough to confer jurisdiction for review by the supreme court.
3. Where a plaintiff has acquired title to a number of outstanding claims against a defendant and his surety, and brings a single action thereon, setting up each claim in separately stated and numbered causes of action, each one of which is for a sum of money less than $100, and where the plaintiff prevails in the action and separate judgments are given on each count, and an aggregate judgment is awarded in his favor for a sum of money in excess of $100, section 566 of the civil code gives the defendant a right of appeal to the supreme court.
4. Where contractors agree to build a road and to pay "for all labor and material and all other obligations or liabilities incurred in the doing of the said work or performance of any of the things necessary hereunder," and a surety company, for a valuable consideration, guarantees the performance of the contract, and where the contractors fail to pay the necessary and pertinent bills incurred by them in such undertaking, the surety company is liable thereon.
5. In a road building contract, which named the quarry where the materials for the road were to be obtained, the contractors failed to pay the necessary and pertinent accounts for dynamite, for coal consumed in the engine which operated the rock crusher, for lumber, for the rent of the quarry and for the rent of tools. **Held,** that the surety company was liable for the payment of these accounts under its surety obligation.
Johnston, C. J., Mason, J., and Marshall, J., concurring.
Burch, J., Porter, J., and West, J., dissenting from Syllabus No. 5 and corresponding portion of the opinion.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 19,915.
Abe Dancinger et al., Partners, etc., Appellants,
vs.
D. G. Cooley, Appellee.
Appeal from Shawnee County.
(Division No. 1.)
AFFIRMED.

Syllabus. By the Court. Mason, J.
1. A controversy as to the application of a payment made by a debtor held to be settled by the verdict and judgment.
2. A principal who employs an agent to make collections under circumstances which make the act a violation of the criminal law, can not maintain an action for the recovery of the amount collected.
3. Under the circumstances of this case it will not be presumed that the sale of intoxicating liquors is forbidden by the laws of Missouri.
4. One who ships liquor to his own order and delivers the bill of lading to another to enable him to receive it for his own use, thereby violates the provision of the Kansas statute forbidding a person to whom intoxicating liquor has been consigned to give to any other person an order upon the carrier for it, with the purpose of enabling him to receive it for himself.
5. The statute referred to in the foregoing paragraph, as applied to a shipment from another state into this, under the circumstances there stated, is not invalid as involving an undue interference with interstate commerce, irrespective of the provision of the Webb-Kenyon act.
6. Where liquor is shipped into this state to the order of the shipper, his representative who collects the purchase price and delivers to the purchaser the bill of lading thereby violates the act of congress which provides a punishment for any person who, in connection with the interstate transportation of intoxicating liquor, shall collect the purchase price from the consignee, or act as the agent of the buyer for the purpose of completing the sale thereof, saving only in the actual transportation and delivery of the same.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,136.
S. O. Gailey, Appellee,
vs.
Peet Brothers Manufacturing Company, Appellant.
Appeal from Wyandotte County.
Third Division.
AFFIRMED.

Syllabus. By the Court. Marshall, J.
1. Under the workmen's compensation act (Laws 1911, ch. 218; Laws 1913, ch. 216) an employee who as a result of an injury to his fingers, can not tightly close them in his hand and is thereby rendered less able to perform his work, is partially incapacitated from performing labor.
2. An employee partially incapacitated by an injury from performing his labor, does not lose his right to compensation under the workmen's compensation act by remaining in the employment of his master at his former wages.
3. Under the workmen's compensation act, any statement, oral or written, made within the proper time, by which the injured employee makes it known to his employer that he is claiming compensation, is sufficient to comply with the statute.
4. Under the workmen's compensation act, a claim of error in rendering judgment without allowing the defendant for payments which the workman may have received from the employer during his period of incapacity is unavailing, where the employer does not request an instruction to the jury covering that question, and it does not appear that the allowance was not made.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,171.
Rebecca M. Eisenbise (Al Keiser as Assignee, etc., Appellant),
vs.
J. M. Eisenbise, Appellee.
Appeal from Gove County.
AFFIRMED.

Syllabus. By the Court. Mason, J.
Where the parties to a divorce suit file a stipulation that the defendant shall pay a stated amount as the fee of the plaintiff's attorney, and the cause is dismissed without any order having been made in reference thereto, the court has no jurisdiction at a subsequent term to render judgment for such payment.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,147.
Alex. B. Shulsky, Appellee,
vs.
Mary E. Shulsky, Appellant.
Appeal from Doniphan County.
REVERSED.

Syllabus. By the Court. Porter J.
1. If a properly executed will incorporates in itself by reference a deed not so executed, the deed so referred to, if it was in existence at the time of the execution of the will and is so accurately described therein as to assure its identity, takes effect as part of the will.
2. A will devised to each of six children of the testator a specific tract of land, each devise followed by the words "for which a deed has already been made". At the same time the testator executed the six deeds referred to in the will, placed them in one envelope with the will and handed the envelope to a banker with instructions to deliver the deeds at his death to the grantees and to deposit the will in the probate court. Five years thereafter he took the papers from the bank, destroyed the will and some of the deeds, and made a new will and new deeds in place of those destroyed. He then placed the new will and the deeds in an envelope and handed them to the banker with the same directions as before. **Held,** that the deeds were parts of the will and testamentary in character; that the execution of the will and the deeds constitutes one transaction; that the intention of the testator was that the deeds should not operate until his death, and that, being parts of the will, they were subject to revocation.
Johnston, C. J., Burch, J., Mason, J., West, J., and Dawson, J., concurring.
Marshall, J. dissenting.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,168.
E. H. Van Nata, Appellee,
vs.
Nellie F. Snyder, Appellant.
Appeal from Republic County.
REVERSED.

Syllabus. By the Court. Burch, J.
1. A woman was induced to purchase a hotel through fraudulent representations of the vendor. The contract of sale was executed on both sides, the vendee paying half the consideration in cash and executing and delivering notes secured by mortgage for the remainder. After the transaction was concluded, but on the same day, the vendee discovered the fraud. The notes were payable monthly, beginning July 1, 1913. The vendee paid ten of them, the last on October 10, 1913, and meanwhile occupied the property without complaining of the fraud. In January, 1915, the vendor brought suit to recover on the unpaid notes and to foreclose the mortgage. The vendee was without business experience and had relied entirely on the vendor whom she regarded as a friend. She was ashamed to think the vendor had beaten her, was afraid to make him angry and antagonistic, did not know what to do that would do any good, and was ignorant of her rights until she consulted an attorney after she was sued. **Held,** the fraud was not waived or condoned and a counterclaim for damages for the difference between the value of the property as it was and as it was represented to be was wrongfully disallowed.
2. The first paragraph of the syllabus of the case of Thresher Co. v. Gruben, 6 Kan. App. 665, 50 Pac. 67, is overruled.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,172.
The Citizens State Bank of Chautauqua, Kansas, Appellee,
vs.
The First National Bank of Sedan, Kansas, Appellant.
Appeal from Chautauqua County.
AFFIRMED.

Syllabus. By the Court. Porter, J
1. Section 499 of the General Statutes of 1909, as amended by section 1 of chapter 65, Laws of 1911, which prohibits a bank from giving a preference to any depositor or creditor by pledging the assets of the bank, applies only to a bank which is insolvent.
2. An agreement in a promissory note executed by a solvent bank by which it agrees to give additional securities in the future upon demand of the lender, is a valid agreement only so long as the borrowing bank remains in a solvent condition. The collateral agreement is limited by the statute (Gen. Stat. 1909, sec. 499, amended, Laws 1911, ch. 65, sec. 1) which forbids a bank to give a preference to any depositor or creditor.
3. A solvent bank borrowed $10,000 from another bank and gave its promissory note, pledging at the same time certain of its assets as collateral security. The note contained an agreement to give additional security upon notification by the holder. Subsequently, when the borrowing bank was insolvent, its officers at the demand of the holder turned over additional assets of the bank to secure the indebtedness. Upon these facts it is held that the previous agreement did not create an equitable lien on the assets subsequently turned over, and that replevin will lie at the suit of the borrower to recover the assets turned over in violation of the statute.
4. Notwithstanding the statute, which prohibits banks from preferring creditors, contains no declaration that any act in violation thereof shall be void, it is held that a creditor who accepts a preference from an insolvent bank will not be permitted to retain the benefits of the transaction.
5. On the facts stated in the opinion it is held that it was not a condition precedent to the plaintiffs right to maintain the action of replevin that it tender back certain securities surrendered by the defendant at the time the additional securities were turned over.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk of Supreme Court.

No. 20,178.
Evens and Howard Fire Brick Company, Appellant,
vs.
Fred Tarry and Eldred Tarry, etc., Revived in the name of Mary A. Tarry, as Administratrix, etc., et al., Appellees.
Appeal from Leavenworth County.
REVERSED.

Syllabus. By the Court. Dawson, J.
1. Where the facts and correspondence show that a sale of sewer pipe was made "subject to inspection of engineer" and clearly show that there was no warranty, a finding that the sewer pipe was sold with an oral and written warranty that the articles would pass inspection can not be sustained.
2. Where goods are sold subject to inspection, the vendor is not liable for damages occasioned to the vendee because such goods do not meet with approval on inspection.
3. Where sewer pipe is sold subject to inspection and part of it is approved on inspection and part of it which was disapproved on inspection is used by the vendee elsewhere, and part of it is sold and the remainder is retained by the vendee, the approved pipe must be paid for at the agreed purchase price, the pipe used elsewhere must likewise be paid for after deducting a reasonable charge for its transportation to the place where it was used, the pipe sold by vendee must be accounted for, and the remaining pipe retained by the vendee must be paid for at what it is reasonably worth.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,180.
O. W. Jones, Appellee,
vs.
The Atchison, Topeka & Santa Fe Railway Company, Appellant.
Appeal from Sedgwick County. (Division No. 2.)
Reversed and Remanded.

Syllabus. By the Court. Johnston, C. J.
It is within the power of the legislature to require carriers to carry passengers upon freight trains and to fix the measure of their responsibility for injuries suffered by passengers choosing that mode of travel, and under the provisions of Chapter 190 of the Laws of 1909, one who takes passage on a freight train has no right to expect greater precautions for his safety than slight care nor to hold the carrier responsible for any lack of care less than gross negligence.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,184.
O. M. Todd and Vertie Todd, Appellees,
vs.
The Grover Produce Company, Appellant.
Appeal from Reno County.
AFFIRMED.

Syllabus. By the Court. Burch, J.
The proceedings examined and held a motion to make the bill of particulars more definite and certain was properly overruled, the action was not prematurely commenced, and an instruction relating to the defendant's contention, which was not sustained, was properly given.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,496.
J. H. Ruth, Appellee,
vs.
The Witherspoon-Englar Company, Appellant.
Appeal from Wyandotte County.
(Division No. 3.)
REVERSED.

Syllabus. By the Court. Mason, J.
1. In an action under the workmen's compensation act a recovery can be had only upon the basis of disability to labor resulting from the injury received in the course of employment, without the intervention of an independent cause, the separate consequences of which admit of definite ascertainment. It can not be augmented by the fact that the disabling effects of the injury are increased or prolonged by incompetent or negligent surgical treatment even where the employer is responsible.
2. The evidence is held not to justify a finding that the permanent character of an employee's disability is the result of the injury received in the course of his employment, rather than of unskillful surgical treatment, and the verdict is set aside for that reason and because the issue relating to malpractice was not sufficiently presented to the jury.
3. In an action under the workmen's compensation act evidence of the manner in which the injury was received is ordinarily irrelevant, and testimony given in that connection of ill treatment of the plaintiff by the foreman under whom he worked may be prejudicial as tending to arouse feeling against the defendant in the minds of the jury.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,188.
The Citizens Bank of Belton, Mo., Appellee,
vs.
W. H. Bowden and Emma L. Bowden, Appellants.
Appeal from Franklin County.
AFFIRMED.

Syllabus. By the Court. Mason, J.
1. Under the provisions of the uniform negotiable instruments act one who signs a note as co-maker, although in fact a surety, is not released by an extension of time granted to the principal, in consideration of the payment of interest in advance
2. Irrespective of the statute the release of the surety is prevented in such a case by an agreement incorporated in the note that upon the payment of interest by one of the makers time of payment might be extended without notice to the other.
3. The mere fact that in an action upon a note one of the makers pleads suretyship as a basis for a defense founded on an extension granted to the principal, does not require the court, after sustaining a demurrer to the plea, to make a finding that such a party is a surety, for the purpose of preserving his rights as against the principal.
All the Justices concurring.
A true copy.
Attest: D. A. VALETINE.
[Seal.] Clerk Supreme Court.

No. 20,190.
C. H. Rickert, Appellee,
vs.
G. Porter Craddock, et al., Appellants.
Appeal from Morton County.
AFFIRMED.

Syllabus. By the Court. Porter J.
1. The burden of proof rests upon him who asserts that an attorney employed to collect or sue upon a note had authority to compromise or settle his client's claim for less than the amount due thereon, or who seeks to establish the fact that the client ratified such compromise or settlement.
2. Upon the facts stated in the opinion it is held that the trial court rightly directed a verdict for defendants, and that the evidence was not sufficient to show a ratification by the client of the action of his attorney in accepting a compromise or settlement of his claim upon a note placed in the attorney's hands for collection.
All the justices concurring.
A true copy.
Attest: D. A. VALENTINE.
[Seal.] Clerk Supreme Court.

No. 20,530.
The State of Kansas, Appellee,
vs.
George W. Gaunt, Appellant.
Appeal from Rawlins County.
AFFIRMED.

Syllabus. By the Court. Mason, J.
1. The defendant in a criminal case having offered no evidence regarding his reputation, no error is committed in refusing instructions to the effect that his character is presumed to be good and that this presumption is the equivalent of evidence, particularly where the court had instructed that he was to be regarded as of good character except so far as his own testimony might show the contrary.
2. The refusal of various instructions in a homicide case held not to have been erroneous.
3. Whether a child of five years is competent to testify is ordinarily a question for the final determination of the trial court. The testimony of such a witness having been admitted it is proper to submit to the jury the question of the weight to be given it.
4. Where proper instructions are given regarding the consideration of the testimony of a five-year-old witness, it is not error to omit to refer specifically to that of another witness seven years of age, that matter being covered by the general charge.
5. In a prosecution for homicide it is not error to refuse a request for an instruction that the jury should consider the omission of the state to produce a dying statement of the deceased where the only evidence on this subject indicates that none was made.
6. The discretion of the court in relation to the cross-examination by the defendant of his own witness held not to have been abused.
7. In a prosecution for homicide, the state having admitted the bad reputation of the person killed with respect to being peaceable and law-abiding, no error was committed in sustaining its objection to evidence that he had been divorced for adultery and cruelty and had been prosecuted for various public offenses.
8. The evidence held to warrant a conviction.
9. A judgment under the indeterminate sentence act held not to be invalid by reason of omitting to state the minimum length of the term, the law placing it at one year.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE.
[Seal.] Clerk Supreme Court.

No. 20,531
The State Bank of Eudora, Appellee,
vs.
John Brecheisen and Ursula Brecheisen, Appellants
Appeal from Douglas County.
AFFIRMED.

Syllabus. By the Court. Porter, J.
1. In a trial before the court of a suit in the nature of a creditor's bill, the pleadings and admissions of defendants, who were husband and wife, showed that an execution on the original judgment against the husband had been returned unsatisfied, that shortly before the commencement of the action in which the judgment was rendered he executed and delivered to his wife a bill of sale for his personal property valued at $2,800, and a warranty deed for 110 acres of valuable farm lands, retaining another farm which was the homestead, and that the consideration stated in each conveyance was one dollar and love and affection. **Held,** in the absence of any showing that defendants were prejudiced by the ruling or that they had a real defense to the action, it was not material error to rule that the burden rested upon them to explain the transaction.
2. Upon the facts stated in the opinion there was no abuse of discretion in the refusal to permit the filing of an amended answer.
All the Justices Concurring.
A true copy.
Attest: D. A. VALENTINE.
[Seal.] Clerk Supreme Court.

No. 20,472.
George W. Dashiell, as Trustee, etc., Appellee,
vs.
W. L. McGuire, Appellant.
Appeal from Shawnee County (Division No. 2.)
AFFIRMED.

Syllabus. By the Court. Mason, J.
Where an amended petition is filed which recites that all the allegations of the original petition are made a part thereof, no error is committed in overruling a demurrer to the amended pleading if the facts stated in either or both of them are sufficient to constitute a cause of action.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,194.
Martha A. Wilson, Appellant,
vs.
George A. Highley et al., Appellees.
Appeal from Wilson County.
AFFIRMED.

Syllabus. By the Court. Dawson, J.
A mother conveyed her land to her two sons in 1892 upon an alleged oral agreement that they would "keep, care for her and clothe and look after her during her natural life." The deed recited a consideration of $1,000. After the death of the mother twenty-two years later, her daughter brought an action against her brothers, her petition alleging that they had wholly failed to perform their oral agreement, and prayed for cancellation of the deed, for a decree awarding her a one-third interest in the land, and for partition and rents and profits. **Held,** that a demurrer to such a petition was properly sustained.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,199.
J. J. Schaffner, Appellee,
vs.
The Estate of John Schaffner et al., Appellant.
Appeal from Sedgwick Count.
First Division.
AFFIRMED.

Syllabus. By the Court. Burch, J.
The rule announced in the case of Grisham v. Lee, 61 Kan. 533, 60 Pac. 312, that where there is a single hiring and the term of service and time when compensation is due are not fixed, the hiring is continuous and the statute of limitations does not begin to run against a claim for compensation until the service terminates, approved and applied.
All the Justices concurring.
A true copy.
Attest: D. A VALENTINE.
[Seal.] Clerk Supreme Court.

No. 20,191.
Bessie F. Lewis, Appellee,
vs.
The Sells-Floto Shows Company, Appellant.
Appealed from Shawnee County.
(Div. 1.)
AFFIRMED.

Syllabus. By the Court. West, J.
1. The evidence and findings examined and held to be such as to uphold the general verdict.
2. Those attending circus performances need not assume that the seats provided by the management are unsafe or make a critical examination of their fitness for the use which patrons are invited to make of them.
3. A new trial is not to be granted for newly discovered evidence until there is a fair showing of diligence, and unless such evidence would probably require a different decision.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,193.
George Eiler, Appellant,
vs.
The Atchison, Topeka & Santa Fe Railway Company, Appellee.
Appeal from Finney County.
AFFIRMED.

Syllabus. By the Court. Marshall, J.
1. The plaintiff shipped a car of cattle from Beloit to Garden City and went with the car under a livestock shipper's contract. While the car was standing alone on a sidetrack at Strong City, he undertook to ascertain the condition of the cattle. He climbed to the top of a ladder on the side of the car, and thinking that he could see better from the end of the car, placed his right foot on a step of the ladder on the end, with his left hand took hold of the brakewheel at the end of the car to the right of the end ladder, and started to bend over so that he could take hold of a wooden slat in the end of the car with his right hand, intending to climb down toward the lower opposite corner of the car at the end until he could get a good view of the cattle. He was thrown to the ground and injured by the brakewheel turning. He was guilty of such negligence as prevents his recovery for the injuries sustained by him.
2. Under such circumstances the defendant was not guilty of negligence toward the plaintiff.
3. In an action to recover damages for injury sustained by a caretaker of livestock while climbing about the car containing the livestock, it is not reversible error to exclude evidence showing a custom among livestock shippers to climb about and over stock cars in caring for the livestock therein, where the conduct of the party shows that his negligence caused his injury.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,134.
The First National Bank of Parsons, of Parsons, Kansas, Appellee,
vs.
Mattie E. Kennedy, Claude E. Kennedy and Lillienne E. Kennedy, Appellants.
E. B. Stevens, Interpleader.
Appeal from Labette County.
AFFIRMED.

Syllabus. By the Court. West, J.
1. The printer's affidavit stating that a sale notice was published in the regular and entire issue of each number of a daily newspaper for four weeks, the first publication being January 22 and the last February 23, 1915, the sale being on February 24, sufficiently shows publication for thirty days before the day of sale.
2. A newspaper published each day of the week except Sunday is a daily newspaper.
All the Justices' concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,133.
Rev. William Shellberg, et al as Pastor and Board of Consultors of St. John's Parish of the Roman Catholic Church, Appelles,
vs.
Margaret McMahon, Appellant.
Appeal from Washington County.
AFFIRMED.

Syllabus. By the Court. Porter, J.
The pastor of a Catholic church and parish school made a written contract with the defendant by which the defendant agreed to pay the church and school a certain sum of money when they furnished her a clear title releasing her from all claims they might have to certain property by virtue of the last will and testament of her deceased husband. **Held.**
1. Under section 27 of the Civil Code an action may be maintained on the contract for the benefit of the church and school by the person in whose name the contract was made.
2. Since it appears that there was a **bona fide** dispute between the parties as to whether the school and church had acquired an interest in certain property by virtue of the will, a compromise or settlement having been entered into in good faith, there was sufficient consideration for the agreement to pay.
3. The written contract being ambiguous and uncertain with respect to what the church and school were to do or leave undone in order to release the defendant of all claims under the will, it was proper to receive oral testimony in order to show an agrement made before the contract was reduced to writing to the effect that the defendant was to commence some kind of an action to have the will declared null and void, to which the church and school were to interpose no defense.
4. Upon evidence showing that the defendant brought an action against the church and school and procured a decree quieting her title to the property described in the will, and that defendants in that suit interposed to defense, the plaintiffs in the present action are entitled to recover upon the agreement.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,144.
Friedericka Geffert and Henry Geffert, Appellants,
vs.
Adolph Geffert et al., Appellees.
Appeal from Washington County.
AFFIRMED.

Syllabus. By the Court. Dawson, J.
1. Rule followed that a court of equity will not enforce a forfeiture where circumstances permit it to decline to do so and where the substantial rights of the parties demanding the forfeiture can otherwise be adequately protected and compensated.
2. The plaintiffs owned a section of land. As they grew old and feeble and the management of their lands became a burden to them, they conveyed their land to their four sons, a quarter section to each. Each deed contained the following provision:
"The party of the second part shall pay to the parties of the first part the sum of Two Hundred Dollars ($200.00) per annum as follows: Two Hundred Dollars ($200.00) to be paid on the first day of May, 1908 and a like sum to be paid on the first day of May in each succeeding year during the life time of the said parties of the first part or either of them."
". . . . . . should the said party of the second part fail to make payments as above set forth or fail to pay all taxes, or taxes that may be levied against the said land for a period of one year after the said payments shall become due, the premises herein granted shall revert to and become the property of the said parties of first part."
The sons paid the annuities at their convenience with the acquiescence of their parents. One son gave his note for $300 to settle delinquent annuities and paid $130 to apply on a current annuity which sum his mother applied on his note instead. These and related circumstances considered and held sufficient to withhold a decree of absolute forfeiture of the grant to him by his parents; and the judgment in their favor for the balance of the note and for the later accrued and current annuities and the provision made for the speedy payment thereof examined and held sufficient to satisfy the just demands of his parents.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,540.
The State of Kansas, Appellee,
vs.
Porter Patterson, Appellant.
Appeal from Shawnee County. Second Division.
AFFIRMED.

Syllabus. By the Court. Marshall, J.
1. In a prosecution for persistent violation of the prohibitory liquor law, it is not error to deny a motion of the defendant to require the state to elect on which of several prior convictions aleged in and proved under each count it will rely for conviction on that count.
2. Certain alleged errors in the admission of evidence have been examined. The evidence complained of was competent.
3. There was no error in the cross examination of the defendant.
4. It is not much misconduct as will cause a judgment of conviction to be reversed for a county attorney, in his closing argument to a jury, to say that if the jury should disregard the evidence of certain witnesses and return a verdict of not guilty, it would be of no use to try other criminal cases and that he might as well dismiss them, for the reason that the state depends for conviction in those cases upon the same class of testimony as that introduced on the trial in which the argument is made.
5. Certain instructions have been examined. They fully cover the law concerning the matters complained of, and there was no error in giving or refusing instructions.
All the Justices concurring except Daw-
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,145.
O. H. Johnston, Appellant,
vs.
Frank R. Lanter, Appellee.
Appeal from Johnston County.
AFFIRMED.

Syllabus. By the Court. Johnston, C. J.
1. It devolves on one who orders goods of a particular kind or quality to make an early inspection of those received to determine whether they comply with the terms of the contract and to give notice of defects within a reasonable time after the discovery of the same.
2. The mere receipt of goods does not necessarily amount to a waiver of defects, but the buyer is bound to exercise reasonable care in the matter of inspection and is chargeable with knowledge of such defects as are external and visible and which are observable from an ordinary examination, and whether he has acted with reasonable diligence in that respect and given notice of discovered defects to the seller within a reasonable time, are ordinarily questions for the determination of the jury.
3. The finding that there was no waiver of defects in the goods purchased by the defendant is sustained.
4. One who claims damages on account of a breach of contract must not only prove the injury sustained, but must also show with reasonable certainty the amount of damages suffered as a result of the injury.
All the justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

No. 20,146.
W. D. Wilson, Appellant,
vs.
J. T. Johnson, Appellee.
Appeal from Lyon County.
AFFIRMED.

Syllabus. By the Court. Burch, J.
The evidence examined and held to sustain findings that the defendant's name was written on the back of the notes sued on without his authority and without consideration.
All the Justices concurring.
A true copy.
Attest: D. A. VALENTINE,
[Seal.] Clerk Supreme Court.

[First published in The Topeka State Journal, May 11, 1916.]

ELECTION PROCLAMATION.

Mayor's Office, Topeka, Kansas, May 10th, 1916.

WHEREAS, on May 8th, 1916, the Board of Commissioners of the City of Topeka, Kansas, duly passed Ordinance No. 4623, entitled "An ordinance authorizing and directing the Mayor of the City of Topeka, Kansas, to issue a proclamation calling an election for the purpose of submitting to the legal voters of said city propositions to construct certain improvements in said city and issue the bonds of said city to pay for the construction of said improvements," and

WHEREAS, said ordinance was duly approved on May 8th, 1916, and was duly published and took effect on May 8th, 1916, and

WHEREAS, said ordinance provided that said election should be held on Wednesday, May 31st, 1916.

NOW, THEREFORE, I J. E. House, Mayor of the City of Topeka, under and pursuant to the provisions of said ordinance No. 4623, do hereby proclaim and gives notice that an election will be held in said City of Topeka on Wednesday, May 31st, 1916, for the purpose of submitting to the voters of said city the following propositions:

"SHALL THE FOLLOWING BE ADOPTED?

"Shall the Mayor and Commissioners of the City of Topeka be authorized to enlarge the east wing of the City Hall, in said City, by extending the same thirty (30) feet east, and to purchase land necessary therefor, to remodel the interior and install an elevator in said City Hall, and borrow the sum of Seventy-seven Thousand, Five Hundred Dollars ($77,500.00) and issue the bonds of said City in that amount to pay therefor?"

"SHALL THE FOLLOWING BE ADOPTED?

"Shall the Mayor and Commissioners of the City of Topeka be authorized to construct a new City Jail on the present site on Fifth and Jackson Streets, in said City, and borrow the sum of Twenty-two Thousand, Five Hundred Dollars ($22,500.00) and issue the bonds of said City in that amount to pay therefor?"

The ballots used at said election shall have printed thereon each of said propositions in words and figures as above set forth. If a majority of the votes cast at said election shall be in favor of any or all of said propositions, then the Mayor and Commissioners shall be authorized to construct each improvement, the proposition for which shall have received the majority of the votes cast at said election, and issue bonds in the amount above specified in such proposition for the construction of such improvement. Said bonds shall be issued in denominations of not less than five hundred dollars ($500.00) and not more than one thousand dollars ($1,000.00), and the same shall be run for a period of thirty years (30) years and shall bear interest at the rate of four (4) per cent per annum, payable semi-annually and the same shall not be sold for less than their face value and no commission or compensation shall be allowed for their sale. Before any of the said bonds shall be issued and before any contract shall be let for the construction of such improvement, plans and specifications therefor shall be on file and approved and adopted by the Mayor and Commissioners and such improvement shall be constructed in accordance with said plans and specifications. No contract shall be let for the construction of such improvement to exceed in cost the amount above specified in the respective proposition therefor.

Said election shall be held under and pursuant to the general election laws of the State of Kansas; the opening and closing of the polls and the selection of persons to serve as judges and clerks at said election, in each of the election precincts of said city, and the canvas of the return and the declaration of the result thereof, shall be done and carried on at the time and in the manner as provided by law.

IN WITNESS WHEREOF, I have hereunto set my hand, this 10th day of May, 1916.

JAY E. HOUSE.
Mayor, City of Topeka, Shawnee County, Kansas.
Attest: ETTA M. COVELL, City Clerk.
[Seal.]